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**Panel on Financial Affairs**  
**Meeting on 1 June 2009**

**Background brief on proposed expansion of the scheme  
for outsourcing summary bankruptcy cases**

**Purpose**

This paper sets out the background to the scheme for outsourcing summary bankruptcy cases (the Scheme) and summarizes Members' views and concerns on the implementation of the Scheme.

**Background**

2. The Bankruptcy Ordinance (BO) (Cap. 6) provides that Official Receiver (OR) shall become the receiver of the bankrupt's property on the making of a bankruptcy order by the court. For bankruptcy cases where the value of the bankrupt's property is likely to exceed \$200,000 (non-summary cases), OR shall summon a meeting of the creditors for the purpose of appointing a private-sector insolvency practitioner (PIP) as the trustee of the bankrupt's property. For cases where the value of the bankrupt's property is unlikely to exceed \$200,000 (summary cases), no meeting of creditors is called and upon an order made by the court that the case be administered in a summary manner, OR shall automatically be the trustee. Unlike the Companies Ordinance (Cap. 32) which allows OR to outsource summary cases of liquidation to PIPs, BO does not have similar provisions for outsourcing summary cases of bankruptcy before the commencement of the Bankruptcy (Amendment) Ordinance 2005 on 10 December 2007.

3. In 2001, in view of the significant increase in the number of summary bankruptcy cases, the Administration commissioned a consultancy study to review the role of Official Receiver's Office (ORO) in the provision of insolvency administration services. One of the recommendations of the consultancy study was the introduction of legislative amendments to allow ORO to outsource bankruptcy cases to PIPs. The Administration consulted the public in June-August 2002, and the Panel on Financial Affairs (FA Panel) on the

recommendations on 24 July 2002. The FA Panel was briefed on 5 May 2003 on the outcome of the public consultation exercise. Panel members noted that most of the respondents agreed that legislative changes should be introduced to allow ORO to outsource bankruptcy cases to PIPs.

4. On 13 October 2004, the Administration introduced the Bankruptcy (Amendment) Bill 2004 (the Bill) into Legislative Council (LegCo) to amend BO mainly for the purpose of empowering OR to outsource bankruptcy cases to PIPs in specified circumstances. A Bills Committee was formed to scrutinize the Bill. The Bankruptcy (Amendment) Ordinance 2005 was subsequently passed on 6 July 2005 and the relevant subsidiary legislation was approved in June 2007. The Bankruptcy (Amendment) Ordinance 2005 commenced on 10 December 2007.

### **Views and concerns expressed by Members**

5. During the scrutiny of the Bill, Members of the Bills Committee have expressed the following views:

- (a) Noting that PIPs for handling summary bankruptcy cases would be appointed through open tender, members were of the view that to ensure the quality of service provision, the assessment criteria for the tenders should include not only tender price but also other factors, such as the tenderers' manpower resources for undertaking the outsourced summary bankruptcy cases, past experience in insolvency work and track record in providing relevant services. Members also requested that the detailed qualification criteria for appointment as provisional trustees for summary bankruptcy cases should be set out in ORO's tender documents.
- (b) Given the duties of PIPs and the powers conferred upon them for handling bankruptcy cases, members considered it essential for the Administration to put in place appropriate measures to ensure that PIPs would perform their duties and exercise their powers in a reasonable and consistent manner. Members were concerned whether guidelines would be provided to PIPs to facilitate their handling of summary bankruptcy cases. The Administration was urged to closely monitor the performance of PIPs, and conduct random audit checks on a fixed percentage of the outsourced cases.
- (c) Noting that the remuneration of PIPs acting as provisional trustees and first trustees for summary bankruptcy cases should be fixed by OR in accordance with a scale of fees or on such other basis as OR might from time to time approve in writing, members were concerned how OR would fix a level of remuneration that would encourage competent PIPs to participate in the outsourcing scheme.

- (d) Given that in the great majority of self-petition bankruptcy cases, the bankrupts had very limited assets and incomes, and the debtor-deposit of \$8,650 might be the only sum of money available for payment of the costs and charges for the bankruptcy cases, members were concerned that under the order of priority of payment in section 37(1) of BO, there was little chance for PIPs to be paid their remuneration and recover their necessary disbursements for handling the outsourced summary bankruptcy cases. This might discourage PIPs from participating in the outsourcing scheme. Members considered it necessary to elevate the priority of payment of the necessary disbursements, costs and remuneration of PIPs for summary bankruptcy cases.

### **Recent developments**

6. A two-year pilot scheme for outsourcing around 15% of the summary bankruptcy cases was implemented in May 2008. While the Administration has previously committed to review the outsourcing scheme 24 months after implementation, it has recently examined the scope of outsourcing and proposed to expand the scheme to cope with the surge in summary bankruptcy cases. The Administration proposes to brief the FA Panel on the proposed expansion at the meeting on 1 June 2009.

### **Relevant papers**

7. The relevant papers are available at the following link:

<http://www.legco.gov.hk/yr04-05/english/bc/bc02/reports/bc02cb1-rpt-e.pdf>

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